

House Study Bill 633 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON KLEIN)

A BILL FOR

1 An Act relating to public safety nuisances concerning licensed
2 premises where alcoholic beverages, wine, or beer is sold or
3 consumed.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 123.56 Public safety nuisances —
2 procedure.

3 1. A public safety nuisance exists at a licensed premises
4 for purposes of this section when it is established by clear
5 and convincing evidence that an owner, manager, employee,
6 contemporaneous patron or guest of the licensed premises
7 commits any of the following acts either on the premises or
8 within one thousand feet of the premises:

9 a. Unlawfully discharges a firearm or uses an offensive
10 weapon, as defined in section 724.1, regardless of whether it
11 inflicts injury or death.

12 b. Assaults another person with a dangerous weapon as
13 defined in section 702.7 resulting in injury or death.

14 c. Engages in a riot as defined in section 723.1 on at
15 least three separate days within any twelve-month period in
16 which a peace officer responded for purposes of dispersing the
17 participants in the riot. A person who willingly joins in or
18 remains a part of a riot need not be the same person for each
19 riot incident.

20 2. If the county attorney or city attorney where the
21 licensed premises is located has reason to believe a public
22 safety nuisance that constitutes a serious threat to the
23 public safety exists, the county attorney or city attorney, or
24 attorney acting at the direction of the county attorney or city
25 attorney, may file a suit in equity in district court without
26 bond seeking abatement of a public safety nuisance arising
27 from a premises licensed under this chapter pursuant to the
28 requirements of this section.

29 3. An action filed pursuant to subsection 2 shall be given
30 priority over other business pending before the district court
31 and the trial shall begin within forty-five days after the
32 filing of the action. The petitioner may seek a temporary
33 injunction prior to trial.

34 4. In an action seeking abatement of a public safety
35 nuisance as provided in this section, evidence of other

1 current violations of this chapter may be received by the
2 court and considered in determining the remedial provisions
3 of any abatement order. In addition, evidence of prior
4 sanctions, violations of law, nuisance behavior, or general
5 reputation relating to the licensed premises may be admissible
6 in determining the reasonableness of remedial provisions of an
7 abatement order. However, evidence of a prior conviction of
8 the licensee, managers, employees, or contemporaneous patrons
9 and guests is not necessary for purposes of considering or
10 issuing an abatement order under this section. In an action
11 under this section, the administrator may submit to the court
12 a report as evidence on behalf of the division regarding
13 the compliance history of the licensee or permittee for
14 consideration by the court.

15 5. If the district court finds that a public safety nuisance
16 exists, the court may enter judgment declaring the existence
17 of the nuisance and order such remedial action as the court
18 determines reasonable to abate the nuisance. The abatement
19 order may take the form of an injunction. The duration of an
20 abatement order may be up to two years. Remedial action may
21 include but is not limited to temporary closure of the licensed
22 premises, revocation of the license for such period of time as
23 is consistent with section 123.40, required change in business
24 practice or operations, or posting of a bond. If a bond is
25 ordered and posted, the bond shall be subject to forfeiture,
26 in whole or in part, for any further actions contrary to the
27 abatement order.

28 6. For purposes of this section, "*licensed premises*" does
29 not include a licensed premises that is licensed as a food
30 establishment, as defined in section 137F.1, at the same
31 location.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill establishes the requirements for establishing and

1 abating a public safety nuisance under Code chapter 123.

2 New Code section 123.56 provides that a public safety
3 nuisance exists when it is established by clear and convincing
4 evidence that an owner, manager, employee, contemporaneous
5 patron, or guest of the licensed premises unlawfully discharges
6 a firearm or uses an offensive weapon, assaults another person
7 with a dangerous weapon, or engages in a riot on at least three
8 separate days within any 12-month period, on the premises or
9 within 1,000 feet of the premises.

10 The bill provides that if the county attorney or city
11 attorney where the licensed premises is located believes a
12 public safety nuisance exists, the county attorney or city
13 attorney, or attorney acting at the direction of the county
14 attorney or city attorney, may file a suit in equity in
15 district court without bond seeking abatement of the public
16 safety nuisance. The bill provides that a public safety
17 nuisance action shall be given priority over other business
18 pending before the district court and the trial shall begin
19 within 45 days after the filing of the action. The bill
20 then describes evidence that may be considered in an action
21 seeking abatement of the public safety nuisance. The bill
22 provides that if the district court finds that a public safety
23 nuisance exists, the court may enter judgment declaring the
24 existence of the nuisance and order such remedial action as
25 the court determines reasonable to abate the nuisance. The
26 bill describes appropriate remedial action that may be taken
27 by the district court. Finally, the bill excludes a licensed
28 premises that is also licensed as a food establishment from the
29 provision of the bill.